

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
AL OTH 64/2020

7 September 2020

Mr. Robert Seung,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 35/15, 43/4, 41/12 and 42/20.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the failure to respect rights to life and to health of Mr. **Marius Betera**. These violations allegedly occurred in a context of a failure by palm oil industries and the authorities to respect and protect the rights of indigenous peoples and land rights defenders.

Marius Betera was an indigenous Papuan and former employee of PT TSE, a palm oil company located in Jair District and subsidiary company of the Korindo Group.

According to the information received:

KORINDO Group

On 16 May 2020 around 9.00 a.m., Mr. Marius Betera and his wife went to work at their banana plantation plot, located within the compound of PT TSE, a palm oil company subsidiary company of the Korindo Group based in Jair District, Boven Digoel Regency, in the Province of Papua. The company allocates land for its workers to plant their own crops that they can sell for extra income. Mr. Betera resigned from PT TSE in August 2019 but the company allowed him to continue growing bananas on the plot. When visiting their plot on 16 May 2020, Mr. Betera and his wife found that their plantation had been cleared and bulldozed by the company, without any prior notice.

The same day, at around 10.00 a.m., Mr. Betera went to the company office to complain about the situation and spoke with the Planning Manager of the company. A police officer, Mr. [REDACTED], was then called upon to address the dispute and in the allegations that Mr. Betera had brought with him farming and hunting tools, which were considered as “weapons” by the police. It is reported that the police officer had recently been transferred to the Tanah Merah police station in 2019 after he had been accused of violence against an elderly indigenous woman in his previous post. According to eyewitnesses, Mr. Betera was intercepted by the police officer as he left the company office. The two men argued over the farming and hunting tools that Mr. Betera had allegedly brought. The police officer confiscated the hunting tools and allegedly struck Mr. Betera repeatedly in the face with one of them. He then punched him several times in the head and neck. He was also seen to kick him in the stomach. The assault left Mr. Betera bleeding from the ear.

At around 11.00 a.m., Mr Betera left for a nearby police station to file a complaint. However, he was told that the officer on duty was on a break so he went back to his home.

At around 1.00 p.m., Mr. Betera went to a health clinic on his motorbike to get treatment for his injuries. The clinic he went to is situated in the compound of the company. He collapsed outside of the clinic and was pronounced dead soon after.

A representative of Korindo Group, Mr. [REDACTED], sent a statement to the media claiming that the company had informed Mr. Betera in February 2020 about the plan to vacate the banana plot and that the land planted with banana trees by Mr. Betera belonged to PT TSE. According to their statement, he did not hold any customary rights to the land. The company also denied the allegation that any staff had called the police to ask for help to handle Mr Betera when he visited the company office.

The Police Chief of Boven Digoel Regency, [REDACTED], stated that an employee at the company, alarmed at the sight of Mr. Betera carrying the supposed weapons, called the police for help. The Police Chief Mr [REDACTED] also said that they had arrested Mr. [REDACTED], the police officer who had allegedly

attacked Mr Betera and had asked Mr. Betera's family to file an official report. In addition to these statements, the Spokesperson of the Papua Provincial Police claimed that Mr. Betera had died of a heart attack and that an autopsy showed no signs of bruising.

Without prejudice to the abovementioned allegations, we express our deep concern about the circumstances leading to the death of Marius Betera, which seems related to the exercise of his right to freedom of expression regarding his indigenous land rights. We are concerned that these circumstances may deter indigenous peoples and land rights defenders from exercising their right to freedom of association, of peaceful assembly and of expression, including by speaking out against illegal palm oil plantations on land that belongs to indigenous communities, with serious adverse effects for the rights of indigenous peoples.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information of the measures that had been taken to respect the physical integrity of Marius Betera.
3. Please indicate what measures have been adopted to involve the indigenous communities in transparent legal proceedings regarding the use of their lands by your corporation.
4. Please indicate what measures have been taken to ensure community members, indigenous farmers and land rights defenders can their concerns on land related issues free from any form of threats or intimidation.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on the same subject was also sent to the Government of Indonesia.

Please accept, Mr. Robert Seung, the assurances of our highest consideration.

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

José Francisco Cali Tzay

Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your company of its responsibilities under the Guiding Principles on Business and Human Rights (A/HRC/17/31). The Guiding Principles have established themselves as the authoritative global standard for business to prevent and address negative business-related impacts on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all businesses, wherever they operate. It exists independently of the ability and/or willingness of States to meet their own human rights obligations and does not diminish those obligations. It is an additional responsibility to that of complying with national laws and regulations protecting human rights.

“The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”. (Guiding Principle 13).

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. (Guiding Principle 15)

In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships [...] meaningful consultation with potentially affected groups and other relevant stakeholders (Guiding Principle 18).

Also, Principle 22 provides that “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. Establishing grievance mechanisms at the operational level for those potentially affected by business activities can be an effective means of redress provided they meet certain requirements listed in Principle 31 (Commentary on Guiding Principle 22).

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) which discusses the obligation of States to protect individuals against human rights abuses by companies that they own or control. In particular, we would like to highlight the following conclusions and recommendations: “All businesses, whether public or wholly private, have a responsibility to respect human rights. This responsibility is distinct from, but complementary to, the State's duty to protect against human rights abuses by business enterprises.”

In this context, we would like to highlight that international human rights law protects individuals' right to freedom of opinion and expression, under article 19 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we would like to recall articles 5 and 12 (2) of the UN Declaration on Human Rights Defenders, which provide that, for the purpose of promoting and protecting human rights and fundamental freedoms, everyone whose rights or freedoms are allegedly violated has the right, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress where there has been a violation of that person's rights or freedoms; and that the State shall take all necessary measures to ensure the protection of anyone facing violence, threats, discrimination, or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.